

DECISIONS PER CURIAM, ETC., FROM JANU-  
ARY 16, 1940, THROUGH APRIL 22, 1940.\*

No. 204. *KOBILKIN v. PILLSBURY, DEPUTY COMMISSIONER OF U. S. EMPLOYEES' COMPENSATION COMMISSION, ET AL.* Certiorari, 308 U. S. 530, to the Circuit Court of Appeals for the Ninth Circuit. Argued January 8, 9, 1940. Decided January 29, 1940. *Per Curiam*: The judgment is affirmed by an equally divided Court. *Mr. George G. Olshausen* submitted for petitioner. *Mr. Telford Taylor*, with whom *Solicitor General Jackson*, *Assistant Attorney General Shea*, and *Messrs. Aaron B. Holman* and *Richard H. Demuth* were on the brief, for Pillsbury, Deputy Commissioner (the brief being also on behalf of the Compensation Commission, as *amicus curiae*); and *Mr. M. B. Plant*, with whom *Messrs. Herman Phleger*, *Maurice E. Harrison*, and *Gregory A. Harrison* were on the brief, for Matson Navigation Co.,—respondents. Reported below: 103 F. 2d 667.

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No. 603. *JAGELS, "A FUEL CORPORATION," v. TAYLOR, COMPTROLLER OF THE CITY OF NEW YORK.* Appeal from the Supreme Court of New York. January 29, 1940. *Per Curiam*: The motion to substitute Joseph D. McGoldrick, present Comptroller of the City of New York, as appellee in place of Frank J. Taylor is granted. The judgment is affirmed. *McGoldrick v. Berwind-White Coal Mining Co.*, ante, p. 33; *McGoldrick v. Du Grenier*, ante, p. 70; *McGoldrick v. Felt & Tarrant Co.*, ante, p. 70. *Mr. Marion B. Pierce* for appellant. *Mr. William C. Chanler* for appellee. Reported below: 255 App. Div.

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\*For decisions on applications for certiorari, see *post*, pp. 642, 653; for rehearing, *post*, p. 692. For cases disposed of without consideration by the Court, *post*, p. 691.

965; 280 N. Y. 766; 281 N. Y. 664, 677; 8 N. Y. S. 2d 456; 21 N. E. 2d 526; 22 N. E. 2d 487, 872.

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No. 629. COLUMBIA TERMINALS Co. v. LAMBERT ET AL. Appeal from the District Court of the United States for the Eastern District of Missouri. January 29, 1940. *Per Curiam*: The decree is vacated and the cause is remanded to the District Court with directions to dismiss the complaint on the merits. *Eichholz v. Public Service Commission*, 306 U. S. 268; *Welch Co. v. New Hampshire*, 306 U. S. 79. *Messrs. Guy A. Thompson and Charles M. Spence* for appellant. *Messrs. James H. Linton, Daniel C. Rogers, and Edgar H. Wayman* for appellees. Reported below: 30 F. Supp. 28.

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No. 630. PUBLIC SERVICE COMMISSION OF MISSOURI v. COLUMBIA TERMINALS Co. Appeal from the District Court of the United States for the Eastern District of Missouri. January 29, 1940. *Per Curiam*: The appeal is dismissed for want of jurisdiction. *Public Service Commission v. Brashear Lines*, 306 U. S. 204. *Messrs. James H. Linton and Daniel C. Rogers* for appellant. *Messrs. Guy A. Thompson and Charles M. Spence* for appellee. Reported below: 30 F. Supp. 28.

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No. 622. CADY ET AL., DOING BUSINESS AS C. M. CADY & SONS v. DETROIT ET AL. Appeal from the Supreme Court of Michigan. January 29, 1940. *Per Curiam*: The appeal is dismissed for want of a substantial federal question. (1) *Euclid v. Ambler*, 272 U. S. 365; *Cusack Co. v. Chicago*, 242 U. S. 526; (2) *Hatch v. Reardon*, 204 U. S. 152, 160-161; *Standard Food Co. v. Wright*, 225 U. S. 540, 550; *Warehouse Co. v. Tobacco Growers*, 276

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U. S. 71, 88; (3) *Caperton v. Boywer*, 14 Wall. 216, 236-237; *Herndon v. Georgia*, 295 U. S. 441, 442-443. *Mr. Edward N. Barnard* for appellants. Reported below: 289 Mich. 499; 286 N. W. 805.

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No. —, original. *EX PARTE J. L. STEWART*; and

No. —, original. *EX PARTE L. CARRIZAL*. January 29, 1940. Motions for leave to file petitions for writs of habeas corpus denied.

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No. 2, original. *WISCONSIN ET AL. v. ILLINOIS ET AL.*;

No. 3, original. *MICHIGAN ET AL. v. ILLINOIS ET AL.*;  
and

No. 4, original. *NEW YORK ET AL. v. ILLINOIS ET AL.*  
January 29, 1940. A rule is ordered to issue returnable February 26 next requiring the complainants to show cause why the petition for temporary modification of the decree should not be granted.

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No. 10, original, October Term, 1935. *WYOMING v. COLORADO*. January 29, 1940. The return to the rule to show cause is received and ordered filed. This cause is set for hearing on Monday, February 26 next, on the motion for leave to file petition for rule to show cause and return to the rule to show cause.

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Nos. 543 and 544. *LOEHR, MAYOR, ET AL. v. DOWNEY, RECEIVER*. February 1, 1940. John J. Condon, Mayor, Gustav W. Klein, Jr., First Deputy and Acting Comptroller, and Raymond J. Whitney, City Manager, etc., successors to Joseph F. Loehr, Mayor, James J. Hushion, Comptroller, and Dennis M. Morrissey, Commissioner of Public Safety, respectively, substituted as the parties pe-

tioners herein on motion of *Mr. George P. Barse* on behalf of counsel for the petitioners.

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No. 281. *WADLEY ET AL. v. LOUISIANA EX REL. MUNN*. Appeal from the Supreme Court of Louisiana. Argued January 30, 31, 1940. Decided February 5, 1940. *Per Curiam*: The appeal is dismissed for want of a properly presented federal question. *Godchaux v. Estopinal*, 251 U. S. 179; *Rooker v. Fidelity Trust Co.*, 261 U. S. 114, 117; *Herndon v. Georgia*, 295 U. S. 441, 443. *Messrs. John B. Files and Joseph H. Jackson* for appellants. *Messrs. R. D. Watkins, A. L. Burford, and T. W. Holloman* were on a brief for appellee. Reported below: 192 La. 874; 189 So. 561.

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No. 370. *MONTROSE CEMETERY Co. v. COMMISSIONER OF INTERNAL REVENUE*. Certiorari, 308 U. S. 542, to the Circuit Court of Appeals for the Seventh Circuit. Argued February 2, 1940. Decided February 5, 1940. *Per Curiam*: As it appears that the Board of Tax Appeals received and considered the evidence pertinent to the question of the valuation of the cemetery lots on March 1, 1913, we find no ground for disturbing its ruling. The judgment of the Circuit Court of Appeals is affirmed. *Mr. Elden McFarland*, with whom *Mr. E. J. Quinn* was on the brief, for petitioner. *Mr. Richard H. Demuth*, with whom *Solicitor General Jackson, Assistant Attorney General Clark*, and *Mr. Sewall Key* were on the brief, for respondent. Reported below: 105 F. 2d 238.

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No. 614. *PUBLIC SERVICE COMMISSION v. WISCONSIN TELEPHONE Co.* See *post*, p. 657.

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No. —, original. *EX PARTE WARREN ELWOOD*; and

No. —, original. *EX PARTE KENNETH GERARD*. February 5, 1940. Motions for leave to file petitions for writs of habeas corpus denied.

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No. —, original. *EX PARTE SAMUEL WHITE*. February 5, 1940. Motion for leave to file petition for writ of prohibition denied.

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No. 648. *WINKELMAN v. ALLMAN*. February 5, 1940. Motion of respondent to require petitioner to post a cost bond denied without prejudice to an application to the Circuit Court of Appeals for the Ninth Circuit. *Mr. Walter C. Fox, Jr.* for petitioner. *Mr. Roy G. Allman* for respondent. Reported below: 106 F. 2d 663.

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No. 473. *MCGOLDRICK, COMPTROLLER OF THE CITY OF NEW YORK, v. GULF OIL CORP.* See *post*, p. 692.

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No. —, original. *OKLAHOMA EX REL. WILLIAMSON, ATTORNEY GENERAL, v. WOODRING, SECRETARY OF WAR*. Argued January 29, 30, 1940. Decided February 12, 1940. *Per Curiam*: The motion for leave to file a bill of complaint is denied by an equally divided Court. *MR. JUSTICE MURPHY* took no part in the consideration or decision of this motion. *Messrs. Claude C. Hatchett and Mac Q. Williamson*, Attorney General of Oklahoma, with whom *Messrs. Randell S. Cobb*, First Assistant Attorney General, and *William O. Coe* were on the brief, for the motion. *Attorney General Jackson*, with whom *Assistant Attorney General Littell* and *Messrs. Warner*

*W. Gardner, Oscar A. Provost, Richard H. Demuth, and Joseph W. Kimbel* were on the brief, in opposition.

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No. 355. UNITED STATES *v.* MOSCOW FIRE INSURANCE Co. ET AL. Certiorari, 308 U. S. 542, to the Supreme Court of New York. Argued February 1, 2, 1940. Decided February 12, 1940. *Per Curiam*: The judgment is affirmed by an equally divided Court. MR. JUSTICE STONE, MR. JUSTICE REED, and MR. JUSTICE MURPHY took no part in the consideration or decision of this cause. *Mr. Edward J. Ennis*, with whom *Solicitor General Jackson, Assistant Attorney General Shea, and Messrs. Paul A. Sweeney, Frederick Bernays Wiener, and Aaron B. Holman* were on the brief, for the United States. *Mr. Paul C. Whipp*, with whom *Mr. Lounsbury D. Bates* was on the brief, for Lucke, Surviving Director of Moscow Fire Ins. Co.; *Mr. Borris M. Komar* for Morro et al.; *Mr. Osmond K. Fraenkel* for Kentman et al.; *Mr. Hartwell Cabell* for Heckscher et al.; *Mr. Walter H. Pollak* for Zahle et al.; *Mr. Samson Selig* submitted for Sawyer et al.; and *Mr. Thomas Kiernan* submitted for Hoppe, Executor;—respondents. By leave of Court *Mr. Frederick H. Wood* filed a brief on behalf of Steingut et al., Receivers, as *amici curiae*, urging affirmance. Reported below: 161 Misc. 903; 253 App. Div. 644; 280 N. Y. 286; 294 N. Y. S. 648; 3 N. Y. S. 2d 653; 20 N. E. 2d 758; 21 N. E. 2d 890.

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No. 437. McCABE *v.* BOSTON TERMINAL Co. Certiorari, 308 U. S. 543, to the Superior Court in and for the County of Suffolk, Massachusetts. Argued February 8, 1940. Decided February 12, 1940. *Per Curiam*: The Supreme Judicial Court, holding that the plaintiff's cause of action arose under the Federal Employers' Liability Act, directed judgment for the defendant upon the ground

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that the time had passed within which an action could be brought or an amendment allowed setting up such a cause of action. We are of the opinion that this was error and that an opportunity for such an amendment should have been afforded. *New York Central & Hudson River R. Co. v. Kinney*, 260 U. S. 340. The judgment is vacated and the cause is remanded for further proceedings not inconsistent with this opinion. *Mr. Laurence D. Yont*, with whom *Messrs. Alonzo E. Yont* and *Henry Lawlor* were on the brief, for petitioner. *Messrs. Joseph Wentworth* and *John M. Hall*, with whom *Mr. John L. Hall* was on the brief, for respondent. Reported below: 22 N. E. 2d 33.

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No. —, original. EX PARTE JOHN BROWN. February 12, 1940. Motion for leave to file petition for writ of habeas corpus denied.

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No. —, original. EX PARTE CHARLES E. PHILLIPS; and

No. —, original. EX PARTE CLARENCE M. BRUMMETT. February 26, 1940. Motions for leave to file petitions for writs of habeas corpus denied.

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No. —, original. EX PARTE WALLACE S. BRANSFORD. February 26, 1940. A rule is ordered to issue, returnable Monday, March 18, next, requiring the respondent to show cause why leave to file the petition for writ of mandamus should not be granted.

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No. —, original. EX PARTE IRA J. McCULLOUGH ET AL. February 26, 1940. A rule is ordered to issue, returnable Monday, March 18, next, requiring the respondent to show cause why leave to file the petition for writ of mandamus should not be granted.

No. —, original. *EX PARTE* EDMOND C. FLETCHER. February 26, 1940. Motion for leave to file petition for writ of mandamus denied.

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Nos. —, —, original. *EX PARTE* R. L. SCOTT. February 26, 1940. Motions for leave to file petitions for writs of mandamus denied.

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No. 476. *UNITED STATES v. NORTHERN PACIFIC RAILWAY CO. ET AL.*; and

No. 477. *NORTHERN PACIFIC RAILWAY CO. ET AL. v. UNITED STATES*. February 26, 1940. Motion of the Minority Stockholders of the Northern Pacific Railroad Company for leave to appear and present oral argument in these cases denied.

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No. 210. *MORGAN, EXECUTOR, v. COMMISSIONER OF INTERNAL REVENUE*. February 26, 1940. The opinion is amended by striking from the first line of the second full paragraph on page 2 the words "it is conceded that", and by striking from the first line of the fourth full paragraph on page 3 the words "it is conceded that". The petition for rehearing is denied.

Opinion reported as amended, *ante*, p. 78.

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No. 632. *CANTWELL ET AL. v. CONNECTICUT*. Appeal from the Supreme Court of Errors of Connecticut. February 26, 1940. With respect to the appeal of all appellants from the judgment of the Supreme Court affirming the judgment of conviction on the third count of the information, probable jurisdiction is noted. The appeal of Jesse Cantwell from the judgment of the Supreme



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Court affirming the judgment of conviction on the fifth count is dismissed for want of jurisdiction. § 237 (a), Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 937). Treating the papers whereon that appeal was allowed as a petition for writ of certiorari as required by § 237 (c) of the Judicial Code (43 Stat. 936, 938), certiorari is granted. *Messrs. Joseph F. Rutherford and Hayden C. Covington* for appellants. *Messrs. William L. Hadden, Edwin S. Pickett, Francis A. Pallotti*, Attorney General of Connecticut, *Richard F. Corkey*, Assistant Attorney General, and *Luke H. Stapleton* for appellee. Reported below: 126 Conn. 1; 8 A. 2d 533.

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No. 730. *FRIEDMAN v. MARKENDORF, CHAIRMAN, ET AL.* Appeal from the Court of Appeals of Kentucky. March 4, 1940. *Per Curiam*: The appeal is dismissed for want of a substantial federal question. *Gardner v. Massachusetts*, 305 U. S. 559; *Gray v. Connecticut*, 159 U. S. 77; *Roschen v. Ward*, 279 U. S. 337; *Semler v. Dental Examiners*, 294 U. S. 608, 611. *Mr. John H. Chandler* for appellant. Reported below: 280 Ky. 484; 133 S. W. 2d 516.

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No. 10, original, October Term, 1935. *WYOMING v. COLORADO*. Argued February 26, 27, 1940. Order entered March 4, 1940. The motion of the State of Wyoming for leave to file a petition for a rule directing the State of Colorado to appear and show cause why it should not be adjudged in contempt for the violation of a decree of this Court is granted. The petition presented is ordered filed, and the State of Colorado is directed to show cause, as aforesaid, on or before March 25, 1940. The motion of the State of Colorado that evidence be taken to determine the amount of return flow to the Laramie

River from the diversions at the headgates of the meadowland ditches is denied. *Mr. Ewing T. Kerr*, Attorney General of Wyoming, with whom *Messrs. Harold I. Bacheller*, Deputy Attorney General, *Arthur Kline*, Assistant Attorney General, *James A. Greenwood*, and *W. J. Wehrli* were on the brief, for the complainant. *Mr. Byron G. Rogers*, Attorney General of Colorado, with whom *Messrs. Ralph L. Carr*, Governor, *Henry E. Lutz*, Deputy Attorney General, *Shrader P. Howell*, Assistant Attorney General, *Albert P. Fischer*, *Robert G. Smith*, *Lawrence R. Temple*, *Clifford H. Stone*, and *Jean S. Breitenstein* were on the brief, for the defendant.

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No. —, original. *EX PARTE JAMES A. LOVVORN*. March 4, 1940. Motion for leave to file petition for writ of habeas corpus denied.

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No. —, original. *PENNSYLVANIA v. NEW JERSEY ET AL.* Argued February 26, 1940. Order entered March 4, 1940. Motion for leave to file a bill of complaint granted and process ordered to issue returnable March 25 next. *Mr. Wm. A. Schnader*, with whom *Mr. Claude T. Reno*, Attorney General of Pennsylvania, was on the brief, for the complainant. *Mr. John W. Ockford*, Assistant Attorney General of New Jersey, for the State of New Jersey; and *Mr. Egbert Rosecrans*, with whom *Mr. Robert B. Meyner* was on the brief, for *Bessie Colburn et al.*, defendants.

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No. 2, original. *WISCONSIN ET AL. v. ILLINOIS ET AL.*;

No. 3, original. *MICHIGAN ET AL. v. ILLINOIS ET AL.*;  
and

No. 4, original. *NEW YORK ET AL. v. ILLINOIS ET AL.*  
March 4, 1940. The return to the rule to show cause is

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received and ordered filed and the cause is assigned for argument on Monday, March 25 next, on the petition for temporary modification of the decree and the return to the rule to show cause.

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No. 634. *CANTY v. ALABAMA*. On petition for writ of certiorari to the Supreme Court of Alabama. March 11, 1940. *Per Curiam*: Motion for leave to proceed *in forma pauperis*, and petition for writ of certiorari, granted. The judgment is reversed. *Chambers v. Florida, ante*, p. 227. Mr. Leon A. Ransom for petitioner. Messrs. Thomas S. Lawson, Attorney General of Alabama, and William H. Loeb, Assistant Attorney General, for respondent. Reported below: 238 Ala. 384; 191 So. 260.

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No. 664. *AMERICAN MANUFACTURING CO. v. NATIONAL LABOR RELATIONS BOARD*. On petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit. March 11, 1940. *Per Curiam*: The petition for writ of certiorari is granted. Section 2 (g) (3) of the order of the Circuit Court of Appeals is modified so as to read as follows:

"(3) that the individual contracts of employment entered into between the respondent and some of its employees were made by the respondent in violation of the National Labor Relations Act; and that the respondent will no longer offer, solicit, enter into, continue, enforce, or attempt to enforce such contracts with its employees; but this is without prejudice to the assertion by the employees of any legal rights they may have acquired under such contracts."

As so modified the order is affirmed. *National Licorice Co. v. National Labor Relations Board, ante*, p. 350. MR.

JUSTICE BLACK and MR. JUSTICE DOUGLAS are of the opinion that the order should be affirmed without modification. *Mr. Thomas F. Magner* for petitioner. *Solicitor General Biddle* and *Mr. Charles Fahy* for respondent. Reported below: 106 F. 2d 61.

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No. 735. *GORDON ET AL. v. WIRTZ ET AL.* Appeal from the Supreme Court of Mississippi. March 11, 1940. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction. Section 237 (a), Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 937). Treating the papers whereon the appeal was allowed as a petition for writ of certiorari, as required by § 237 (c) of the Judicial Code (43 Stat. 936, 938), certiorari is denied. *Messrs. Marcellus Green, Garner W. Green, and C. C. Moody* for appellants. *Messrs. William Webb Venable and Charles H. Watson* for appellees. Reported below: 192 So. 29.

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No. 742. *ARTHUR v. INDIANA.* Appeal from the Supreme Court of Indiana. March 11, 1940. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *Hendrick v. Maryland*, 235 U. S. 610; *Hicklin v. Coney*, 290 U. S. 169, 173; *Carley & Hamilton v. Snook*, 281 U. S. 66, 72-73. *Messrs. Sherman Minton and William C. Erbecker* for appellant. *Messrs. Omer Stokes Jackson, Attorney General of Indiana, Joseph W. Hutchinson, and Rexell A. Boyd, Deputy Attorneys General, for appellee.* Reported below: 216 Ind.—; 23 N. E. 2d 674.

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No. 750. *EDGAR BROTHERS Co. v. HEAD, STATE REVENUE COMMISSIONER.* Appeal from the Court of Appeals of Georgia. March 11, 1940. *Per Curiam*: The motion

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to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *Underwood Typewriter Co. v. Chamberlain*, 254 U. S. 113; *Bass, Ratcliff & Gretton, Ltd., v. State Tax Commission*, 266 U. S. 271; *Matson Navigation Co. v. State Board*, 297 U. S. 441; *Ford Motor Co. v. Beauchamp*, 308 U. S. 331. Mr. Orville A. Park for appellant. Messrs. B. B. Zellars and Marshall L. Allison for appellee. Reported below: 60 Ga. App. 482; 4 S. E. 2d 71.

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No. 562. *CONNOR v. CALIFORNIA ET AL.* Certiorari, 308 U. S. 547, to the Supreme Court of California. March 25, 1940. *Per Curiam*: The motion for a writ of certiorari to correct a diminution of the record is denied. The motion to remand is granted, the judgment is vacated and the cause is remanded to the Supreme Court of California for further consideration of the application for habeas corpus. *Frank S. Connor, pro se* and Mr. H. Thomas Austern for petitioner. Messrs. Earl Warren, Attorney General of California, and Everett W. Mattoon, Assistant Attorney General, for respondents. Reported below: 15 Cal. 2d 161.

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No. 87. *WHITE v. TEXAS.* On petition for writ of certiorari to the Court of Criminal Appeals of Texas. March 25, 1940. *Per Curiam*: The motion for leave to file a petition for rehearing is granted, and the petition for rehearing is also granted. The order entered November 13, 1939, 308 U. S. 608, is vacated. The motion for leave to proceed *in forma pauperis* is granted. The petition for writ of certiorari is granted and the judgment is reversed. *Chambers v. Florida, ante*, p. 227; *Canty v. Alabama, ante*, p. 629. The mandate is ordered to issue forthwith. Mr. Carter Wesley for petitioner. Reported below: 139 Texas Crim. Rep. —; 128 S. W. 2d 51.

No. 698. *FRAME v. HUDSPETH, WARDEN*. On petition for writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit. March 25, 1940. *Per Curiam*: The motion for leave to proceed *in forma pauperis* is granted. The petition for certiorari is also granted, and, upon consent of the Solicitor General, the judgment of the Circuit Court of Appeals is reversed and the cause remanded to the District Court for the purpose of making a full inquiry into the mental status of the petitioner at the time he entered the pleas of guilty. *Perry Frame, pro se*. Reported below: 109 F. 2d 356.

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No. 463. *BERGER, RECEIVER, v. CHASE NATIONAL BANK*;

No. 464. *SCHRAM, RECEIVER, v. SAME*;

No. 465. *WARDELL, RECEIVER, v. SAME*;

No. 466. *YOUNG, SUCCESSOR TO HARDEE, RECEIVER, v. SAME*; and

No. 467. *FEUCHT ET AL., LIQUIDATING TRUSTEES, v. SAME*. On petition for writs of certiorari to the Circuit Court of Appeals for the Second Circuit. March 25, 1940. The petition for writs of certiorari is granted, and the judgments of the Circuit Court of Appeals are affirmed. *Woodring v. Wardell, ante*, p. 527; *Inland Waterways Corp. v. Young, ante*, p. 517. The CHIEF JUSTICE, MR. JUSTICE McREYNOLDS, and MR. JUSTICE ROBERTS dissent. MR. JUSTICE MURPHY took no part in the consideration or decision of this cause. *Messrs. John Vance Hewitt, Swagar Sherley, Charles F. Wilson, Brice Clagett, George B. Springston, Martin Conboy, and George P. Barse* for petitioners. *Mr. Henry Root Stern* for respondent. Reported below: 105 F. 2d 1001.

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No. 781. *RAYBURN ET AL. v. RICHARDSON ET AL.* Appeal from the Court of Civil Appeals, 5th Supreme Judi-

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cial District, of Texas. March 25, 1940. *Per Curiam*: The appeal is dismissed for want of a substantial federal question. *Hendrick v. Maryland*, 235 U. S. 610; *Sproles v. Binford*, 286 U. S. 374, 388-389; *Hicklin v. Coney*, 290 U. S. 169, 173. *Mr. William H. Snyder* for appellants. *Messrs. Gerald C. Mann and Glenn R. Lewis* for appellees. Reported below: 131 S. W. 2d 1000.

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No. 788. *GREEN POINT SAVINGS BANK v. BOARD OF ZONING APPEALS OF THE TOWN OF HEMPSTEAD ET AL.* Appeal from the Supreme Court of New York. March 25, 1940. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for the want of a properly presented substantial federal question. (1) *Cleveland & Pittsburgh R. Co. v. Cleveland*, 235 U. S. 50, 53; *Hiawasse Power Co. v. Carolina-Tenn. Co.*, 252 U. S. 341, 344; *White River Co. v. Arkansas*, 279 U. S. 692, 700; (2) *Euclid v. Ambler*, 272 U. S. 365; *Zahn v. Board of Public Works*, 274 U. S. 325; *Lewis v. Mayor*, 290 U. S. 585. *Mr. Irving Mariash* for appellant. *Mr. Franklin T. Voelker* for appellees. Reported below: 257 App. Div. 843; 281 N. Y. 534; 12 N. Y. S. 2d 79; 24 N. E. 2d 319.

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No. —, original. *EX PARTE LOUIS E. SIMMONDS*; and

No. —, original. *EX PARTE HENRY LONG*. March 25, 1940. Motions for leave to file petitions for writs of habeas corpus denied.

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No. 621. *VILES v. PRUDENTIAL INSURANCE CO.* March 25, 1940. Petition for leave to file an amended complaint denied. *Edmond L. Viles, pro se*. Reported below: 107 F. 2d 696.

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No. 355. *UNITED STATES v. MOSCOW FIRE INSURANCE CO. ET AL.* See *post*, p. 697.

No. 152. CHANNAN SINGH *v.* HAFF, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION. Certiorari, 308 U. S. 533, to the Circuit Court of Appeals for the Ninth Circuit. Argued March 26, 1940. Decided April 1, 1940. *Per Curiam*: The judgment is affirmed. *Low Wah Suey v. Backus*, 225 U. S. 460, 468; *Zakonaite v. Wolf*, 226 U. S. 272, 275; *Bilokumsky v. Tod*, 263 U. S. 149, 157. Mr. Marshall B. Woodworth submitted for petitioner. Mr. Gerard D. Reilly, with whom Solicitor General Biddle, Assistant Attorney General Rogge, and Messrs. George F. Kneip, W. Marvin Smith, and Albert E. Reitzel were on the brief, for respondent. Reported below: 103 F. 2d 303.

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No. 809. PEOPLES GAS LIGHT & COKE Co. *v.* HART ET AL. Appeal from the Supreme Court of Illinois. April 1, 1940. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for the want of a substantial federal question. *Los Angeles Gas Co. v. Railroad Commission*, 289 U. S. 287, 304-305; *Lindheimer v. Illinois Tel. Co.*, 292 U. S. 151, 164; *Dayton Power & Light Co. v. Public Utilities Commission*, 292 U. S. 290, 298; *Townsend v. Yeomans*, 301 U. S. 441, 450-451. Messrs. Francis L. Daily, Clay Judson, William P. Sidley, and James F. Oates, Jr. for appellant. Messrs. John E. Cassidy, Montgomery S. Winning, Harry R. Booth, and Barnet Hodes for appellees. Reported below: 367 Ill. 435; 373 *id.* 31; 287 Ill. App. 379; 5 N. E. 2d 285; 11 N. E. 2d 929; 25 N. E. 2d 482.

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No. 14, original. McCULLOUGH ET AL., DOING BUSINESS AS McCULLOUGH TOOL Co., *v.* COSGRAVE, JUDGE, FOR THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA. April 1, 1940. *Per Curiam*: The motion for leave to file petition for mandamus is granted, and the



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return to the order to show cause is treated as an answer to the petition. The District Judge is directed to vacate the order dated January 15, 1940, in the cases of Kammerer Corporation and Baash-Ross Tool Company *v.* Ira J. McCullough et al., and Ira J. McCullough *v.* Baash-Ross Tool Company and Kammerer Corporation, referring these cases to a Master for trial. It is further ordered that the trial of these cases be had by the District Court in due course without postponement of the trial to that of other cases not entitled to a preference, but with such arrangement as to the particular Judge who shall conduct the trial as may be consistent with the court's convenience. Rules of Civil Procedure, Rule 53 (b); *Los Angeles Brush Manufacturing Co. v. James*, 272 U. S. 701. *Mr. Ford W. Harris* for petitioners. *Messrs. Frederick S. Lyon, Leonard S. Lyon, and Henry S. Richmond* for respondent.

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No. —, original. EX PARTE GLEN W. SHAFER; and

No. —, original. EX PARTE ARTHUR E. HANSEN. April 1, 1940. The motions for leave to file petitions for writs of habeas corpus are denied.

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No. —, original. EX PARTE J. C. MOORE. April 1, 1940. Motion for leave to file petition for writ of mandamus denied.

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No. 10, original. TEXAS *v.* NEW MEXICO ET AL. April 1, 1940. The motion of the complainant to apply funds in the registry of the Court to reimburse El Paso County Water Improvement District No. 1 for costs advanced by said District is denied, and the amount remaining in the registry of the Court is directed to be paid to the Attorney General of the State for such disposition as the State may require.

No. 13, original. *PENNSYLVANIA v. NEW JERSEY ET AL.* April 1, 1940. The answers are received and ordered filed. The cause is set for hearing on the Bill of Complaint and Answers and assigned for argument on Monday, April 22, next.

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No. 674. *UNITED STATES v. APPALACHIAN ELECTRIC POWER Co.* April 1, 1940. Motion of the Commonwealth of Virginia for leave to intervene denied, with permission to file a brief and participate in oral argument as *amicus curiae*. MR. CHIEF JUSTICE HUGHES took no part in the consideration or decision of this application. Reported below: 23 F. Supp. 83.

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No. 2, original. *WISCONSIN ET AL. v. ILLINOIS ET AL.*;  
No. 3, original. *MICHIGAN v. ILLINOIS ET AL.*; and  
No. 4, original. *NEW YORK v. ILLINOIS ET AL.* April 3, 1940.

ORDER.

Upon consideration of the return of the States who are complainants in the above entitled causes to the rule issued January 29, 1940, requiring them to show cause why the petition of the State of Illinois for temporary modification of the decree of this Court entered April 21, 1930, and enlarged May 22, 1933, should not be granted, and of the argument had thereon,

IT IS ORDERED that the petition of the State of Illinois and the return of the complainant States to the order to show cause be referred to Monte M. Lemann, Esquire, as a Special Master, with directions and authority to make summary inquiry and to report to this Court with all convenient speed with respect to the actual condition of the Illinois Waterway by reason of the introduction of untreated sewage, and whether, and to what extent, if

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any, that condition constitutes an actual menace to the health of the inhabitants of the complaining communities, and also with respect to the feasibility of remedial or ameliorating measures available to the State of Illinois without an increase in the diversion of water from Lake Michigan.

The Special Master is authorized to employ stenographic and clerical help, to fix times and places for taking evidence, to issue subpoenas to witnesses, including those of his own selection, and to administer oaths. When the report of the Special Master is filed the clerk of the Court shall cause the same to be printed. The Special Master shall be allowed his actual expenses and a reasonable compensation for his services to be fixed hereafter by the Court. The allowances to him, the compensation paid to his stenographic and clerical assistants and the cost of printing his report shall be charged against and be borne by the parties in such proportions as the Court hereafter may direct.

If the appointment herein made of a Special Master is not accepted, or if the place becomes vacant during the recess of the Court, the Chief Justice shall have authority to make a new designation which shall have the same effect as if originally made by the Court herein.

[See *ante*, p. 569.]

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No. 767. *HELVERING, COMMISSIONER OF INTERNAL REVENUE, v. WOOD ET AL., TRUSTEES*. On petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit. April 8, 1940. *Per Curiam*: The petition for writ of certiorari is granted. The judgment is reversed and the cause is remanded to the Circuit Court of Appeals for further proceedings. *Helvering v. Bruun*, *ante*, p. 461. *Solicitor General Biddle* for petitioner. Reported below: 107 F. 2d 869.

No. 823. *A. M. KLEMM & SON v. WINTER HAVEN ET AL.* Appeal from the Supreme Court of Florida. April 8, 1940. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *Central Land Co v. Laidley*, 159 U. S. 103, 112; *Patterson v. Colorado*, 205 U. S. 454, 460-461; *Tidal Oil Co. v. Flanagan*, 263 U. S. 444, 450. *Mr. Harvey C. Crittenden* for appellant. *Mr. Henry M. Sinclair* for appellees. Reported below: 140 Fla. 60; 192 So. 652.

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No. 840. *ACME FAST FREIGHT, INC., ET AL. v. UNITED STATES ET AL.* Appeal from the District Court of the United States for the Southern District of New York. April 8, 1940. *Per Curiam*: The decree is affirmed. *Lehigh Valley R. Co. v. United States*, 243 U. S. 444; *Interstate Commerce Commission v. Delaware, L. & W. R. Co.*, 220 U. S. 235; *Northern Ry. Co. v. O'Connor*, 232 U. S. 508. *Mr. J. R. Turney* for appellants. *Mr. J. Stanley Payne* for appellees. Reported below: 30 F. Supp. 968.

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No. —, original. *EX PARTE ROBERT CONSIDINE*. April 8, 1940. Motion for leave to file petition for writ of habeas corpus denied.

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No. 674. *UNITED STATES v. APPALACHIAN ELECTRIC POWER Co.* April 8, 1940. The motion of the States of Virginia and West Virginia for a continuance is granted and the case is assigned for argument on Monday, October 14, next. The CHIEF JUSTICE took no part in the consideration and decision of this application.

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No. 822. *WASHINGTON EX REL. COLUMBIA BROADCASTING Co. v. SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY ET AL.* Appeal from the Supreme

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Court of Washington. April 8, 1940. The appeal is dismissed for want of jurisdiction. § 237 (a), Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 937). Treating the papers whereon the appeal was allowed as a petition for writ of certiorari, as required by § 237 (c) of the Judicial Code (43 Stat. 936, 938), certiorari is granted. *Messrs. Cassius E. Gates and Godfrey Goldmark* for appellant. Reported below: 1 Wash. 2d 379; 96 P. 2d 248.

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No. 768. *HELVERING, COMMISSIONER OF INTERNAL REVENUE, v. CENTER INVESTMENT CO.* On petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit. April 22, 1940. *Per Curiam*: The petition for writ of certiorari is granted. The judgment is reversed and the cause is remanded to the Circuit Court of Appeals with directions to remand to the Board of Tax Appeals for findings in the light of the principles established in *Helvering v. Bruun, ante*, p. 461, and for findings and decision on the other questions left undetermined by the Board. *Solicitor General Biddle* for petitioner. *Mr. D. G. Eggerman* for respondent. Reported below: 108 F. 2d 190.

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No. 844. *FLORIDA EX REL. GARLAND v. CITY OF WEST PALM BEACH.* Appeal from the Supreme Court of Florida. April 22, 1940. *Per Curiam*: The appeal is dismissed for the reason that the judgment of the state court is based upon a non-federal ground adequate to support it. *Farson, Son & Co. v. Bird*, 248 U. S. 268, 271; *Doyle v. Atwell*, 261 U. S. 590; *McCoy v. Shaw*, 277 U. S. 302. *Messrs. Stuart B. Warren, George W. Wylie, and J. Velma Keen* for appellant. Reported below: 141 Fla. 244; 193 So. 297.

No. 845. FLORIDA EX REL. YOEMAN *v.* CITY OF SARASOTA; and

No. 846. FLORIDA EX REL. GARLAND *v.* SAME. Appeals from the Supreme Court of Florida. April 22, 1940. *Per Curiam*: The motions to dismiss are granted and the appeals are dismissed for the reason that the judgments of the state court are based upon a non-federal ground adequate to support them. *Farson, Son & Co. v. Bird*, 248 U. S. 268, 271; *Doyle v. Atwell*, 261 U. S. 590; *McCoy v. Shaw*, 277 U. S. 302. *Messrs. Stuart B. Warren, George W. Wylie, and J. Velma Keen* for appellants. *Messrs. J. J. Williams, Jr. and Francis C. Dart* for appellee. Reported below: 141 Fla. 256; 142 *id.* 371; 194 So. 875; 193 *id.* 299.

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No. 836. SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, ET AL. *v.* EVANS, BUILDING AND LOAN COMMISSIONER. Appeal from the Supreme Court of California. April 22, 1940. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for the want of a properly presented federal question. *Godchaux Co. v. Estopinal*, 251 U. S. 179; *Rooker v. Fidelity Trust Co.*, 261 U. S. 114, 117; *Herndon v. Georgia*, 295 U. S. 441, 443. *Messrs. Wm. M. Cannon and W. H. Orrick* for appellants. *Messrs. O. K. Cushing, Charles S. Cushing, Everett S. Layman, and Bartley C. Crum* for appellee. Reported below: 14 Cal. 2d 563; 96 P. 2d 107.

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No. 838. MOON *v.* JONES, COUNTY CLERK; and

No. 862. FRANKLIN SOCIETY FOR HOME BUILDING & SAVINGS *v.* BENNETT, ATTORNEY GENERAL, ET AL. Appeals from the Supreme Court of New York. April 22, 1940. *Per Curiam*: The motions to dismiss are granted and the appeals are dismissed for want of a substantial federal question. *Bell's Gap R. Co. v. Pennsylvania*, 134

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U. S. 232, 237; *Northwestern Life Ins. Co. v. Wisconsin*, 247 U. S. 132, 138-139; *Alward v. Johnson*, 282 U. S. 509, 513-514. Messrs. *Seth T. Cole*, *Martin Saxe*, *Edward F. Colladay*, and *S. F. Colladay* for appellant in No. 838. Messrs. *James A. Davis* and *Leon Quat* for appellant in No. 862. Messrs. *John J. Bennett, Jr.*, Attorney General of New York, *Henry Epstein*, Solicitor General, and *Jack Goodman*, Assistant Attorney General, for appellees. Reported below: No. 838, 282 N. Y. 553; 24 N. E. 2d 981; 25 N. E. 2d 396. No. 862, 257 App. Div. 486; 282 N. Y. 79; 14 N. Y. S. 2d 49; 24 N. E. 2d 854.

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No. 87. *WHITE v. TEXAS*. Certiorari, *ante*, p. 631, to the Court of Criminal Appeals of Texas. April 22, 1940. This cause is set for May 20, 1940, in order to afford to the State of Texas the opportunity to present its contentions upon the questions set forth in subdivisions (e), (f), (g), (h), and (j) of paragraph 4 of its petition for rehearing. The case will be heard on briefs and oral argument, or on briefs alone if that is desired, briefs to be filed and served on or before the date above mentioned. Mr. *Carter Wesley* for petitioner. Messrs. *Gerald C. Mann*, Attorney General of Texas, *George W. Barcus*, Assistant Attorney General, and *Lloyd W. Davidson* for respondent. Reported below: 139 Texas Crim. —; 128 S. W. 2d 51.

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No. —, original. EX PARTE ALBERT LEIGHTON. April 22, 1940. Motion for leave to file petition for writ of mandamus denied.

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No. —, original. EX PARTE SAMUEL WHITE; and

No. —, original. EX PARTE JAMES J. WALSH. April 22, 1940. Motions for leave to file petitions for writs of habeas corpus denied.

No. —. *EX PARTE E. R. LINDSEY*. April 22, 1940.  
Application denied.

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No. 499. *FEDERAL COMMUNICATIONS COMMISSION v. SANDERS BROTHERS RADIO STATION*. April 22, 1940. The opinion in this case is amended by inserting the word "financially" between the words "be" and "injured," in the last line on page 5, and by striking from the opinion the first full sentence, beginning "In" and ending "remedy," on page 6. The petition for rehearing is denied.

Opinion reported as amended, *ante*, p. 470.

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DECISIONS GRANTING CERTIORARI, FROM  
JANUARY 16, 1940, THROUGH APRIL 22, 1940.

No. 582. *PUERTO RICO v. RUBERT HERMANOS, INC.* January 29, 1940. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit granted. *Messrs. William Cattron Rigby, Nathan R. Margold, and George A. Malcolm* for petitioner. *Mr. Henri Brown* for respondent. By leave of Court, *Solicitor General Jackson* filed a brief on behalf of the United States, as *amicus curiae*, in support of the petition. Reported below: 106 F. 2d 754.

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No. 587. *UNITED STATES v. CITY AND COUNTY OF SAN FRANCISCO*. January 29, 1940. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit granted. *Solicitor General Jackson* for the United States. *Messrs. John J. O'Toole, Dion R. Holm, Robert M. Searls, and Garret W. McEnerney* for respondent. Reported below: 106 F. 2d 569.

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No. 595. *KERSH LAKE DRAINAGE DISTRICT ET AL. v. JOHNSON*. January 29, 1940. Petition for writ of